

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD G. TRUCHAN,

Defendant-Appellant.

UNPUBLISHED

November 26, 2002

No. 236560

Wayne Circuit Court

LC No. 00-006515-01

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for aggravated stalking, MCL 750.411i. We affirm.

Defendant asserts that he was denied the effective assistance of counsel, who failed to move to strike an unlisted witness and failed to seek a jury instruction on legitimate purpose as a defense to stalking. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

The witness list submitted by the prosecution listed the officer who served the PPO on defendant as a witness, but it did not identify her by name. MCL 767.40a(4) provides that the prosecuting attorney may add to the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown. Had defendant objected to the witness, it is likely the court would have allowed the prosecutor to amend the witness list. Defendant was not prejudiced where he was aware at all times that the officer who served the PPO would testify. The jury was properly instructed on the two incidents alleged, and defendant was not prejudiced by counsel's failure to request an instruction on conduct serving a legitimate purpose that was not at issue in the case.

Affirmed.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski